LONE STAR STEEL CO.

IBLA 83-828 Decided November 14, 1983

Appeal from a readjustment of coal lease BLM-C 018820 OK by the New Mexico State Office, Bureau of Land Management.

Dismissed.

1. Coal Leases and Permits: Leases--Regulations: Generally--Rules of Practice: Appeals: Dismissal

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

APPEARANCES: William A. Osborn, Esq., Operations Counsel for Lone Star Steel Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals amendments to the readjusted terms of coal lease BLM-C 018820 OK, presented by the New Mexico State Office, Bureau of Land Management (BLM), in a June 20, 1983, decision.

This particular readjustment was previously reviewed and affirmed by this Board, except for our modification of the "diligent development" provision so as to conform that requirement to the revised regulation. Lone Star Steel Co., 71 IBLA 92 (1983). When BLM attempted to implement that decision, Lone Star again appealed, raising yet another issue not addressed in its previous appeal involving the terms of readjustment of the same lease. Lone Star now contends that "The amendment terms are objectionable in that they would require Lone Star to agree in advance to presently unknown terms embodied in future regulations."

Although Lone Star does not cite the specific provision in the amended lease terms to which it alludes, we presume that the reference is to the language in section 1, which provides, in part:

> This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and Chapter VII and 43 CFR Group 3400), which are now in force or (except as expressly limited herein) hereafter in force, and all of such regulations are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease.

[1] First, as we have already noted, the terms of the readjustment of this specific lease have been the subject of a previous appeal by Lone Star, which did not raise this issue in that proceeding, although it had full opportunity to do so then. This Board cannot entertain successive appeals in the same lease readjustment case simply because Lone Star elects to select one provision after another to complain of on a piecemeal basis. 1/ This appeal is effectively time-barred pursuant to 43 CFR 3451.2 and 43 CFR 4.411. Where, as here, a BLM decision is merely the ministerial implementation of a prior order or decision of this Board in the same case, no further appeal to the Board will lie, and the inclusion of an appeals paragraph in such a BLM decision is not binding on the Board and cannot create a new right of appeal. Phelps Dodge Corp., 72 IBLA 226 (1983).

Moreover, appellant's concern is focused on what it describes as "presently unknown terms embodied in future regulations" which might "govern economic obligations and operating requirements on Lone Star." Appellant has not asserted that it is presently affected adversely; its concern is hypothetical, conjectural and future-oriented. Although it may be argued that the present imposition of the provision as part of readjusted lease terms constitute an exposure to possible harm in the future, we cannot agree that appellant has been "adversely affected" thereby, as required by 43 CFR 4.410 to confer upon a party standing to appeal.

Lone Star requests the Board to address conjectural circumstances which may not occur during the effective term of the lease. It is the policy of the Board to forego adjudication where no actual controversy exists and no cognizable interest has been adversely affected, avoiding advisory opinions based on hypothetical circumstances. See 43 CFR 4.410; FMC Corp., 74 IBLA 389 (1983); Hal V. Carlson, Jr., 62 IBLA 305 (1982). Cf. Blackhawk Coal Co., 68 IBLA 96, 99-100 (1982) (section 7 governing advance royalty payments in lieu of continued operations).

We add, as dicta, that there are many forms of new, revised or amended regulations which might legitimately be applied to appellant's lease during the future, some which conceivably could work to the lessee's advantage, or at least not adversely affect it. Regulations can define terms, designate forms, or establish procedures. Other regulations may be necessary to implement new legislation concerning environmental protection, national emergency

1/ The previous appeal concerned sections 3, 5, 6, 11, 15, 16, and 17 of the terms of readjustment.

measures, or matters of health or safety, which could be made obligatory on the lessee in any event. Thus, the language of section 1 is not per se unlawful. Further, when new or revised regulations are promulgated, the Department must adhere to administrative procedures found in 5 U.S.C. § 553 (1976), which afford interested parties the opportunity to become involved in the rulemaking process. If such regulations are applied to the lease and appellant feels that its rights have been adversely affected, it may then have a right to appeal to this Board for relief. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ It is noteworthy that there is a statutory restraint against the readjustment of the basic lease terms except at the intervals specified. See Rosebud Coal Sales Co., Inc. v. Andrus, 644 F.2d 849 (10th Cir. 1982).